

# TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

## FEDERAL RULES OF APPELLATE PROCEDURE

## FEDERAL CIRCUIT RULE

### **Rule 22. Habeas Corpus and Section 2255 Proceedings**

(a) **Application for the Original Writ.** An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) **Certificate of Appealability.**

- (1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. The district clerk must send the certificate or statement to the court of appeals with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue the certificate.
- (2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.
- (3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

### **Rule 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding**

(a) **Transfer of Custody Pending Review.** Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge

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rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

**(b) ~~Detention or Release Pending Review of Decision Not to Release.~~** While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

- (1) ~~detained in the custody from which release is sought;~~
- (2) ~~detained in other appropriate custody; or~~
- (3) ~~released on personal recognizance, with or without surety.~~

**(c) ~~Release Pending Review of Decision Ordering Release.~~** While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.

**(d) ~~Modification of the Initial Order on Custody.~~** An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

## Rule 24. Proceeding in Forma Pauperis

**(a) Leave to Proceed in Forma Pauperis.**

- (1) **Motion in the District Court.** Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:
  - (A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;
  - (B) claims an entitlement to redress; and
  - (C) states the issues that the party intends to present on appeal.

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## Rule 24. Proceeding in Forma Pauperis

If an appeal or petition for review is docketed without payment of the docketing fee, the clerk in providing notice of docketing will forward to the appellant or petitioner the form prescribed by this court for the motion to proceed on appeal in forma pauperis. The motion and affidavit may be made on the form provided in the Federal Rules of Appellate Procedure, but the court may request additional information from the movant.